HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL APPEAL NO. 153/2006

Appellant Ramdev Ram Kushwaha

VERSUS

Respondent State of Chhattisgarh

J U D G M E N T

POST ON 18th SEPTEMBER 2007

Sd/-
Dhirendra Mishra
Judge

(46)

CRIMINAL APPEAL NO. 153/2006

Appellant — Ramdev Ram Kushwaha, aged about 31 years, Son of Shri Jaggiram Kushwaha, Resident of Village Koirapara, Banja, Police Station Surajpur, District Surguja (C.G.)

VERSUS

Respondent — State of Chhattisgarh,
Through : The Police Out Post Basdayee, Police Station Surajpur, District Surguja (C.G.)

Present:
Shri V.C. Ottalwar, Advocate for the appellant.
Shri G.K. Beriwal, Dy. Advocate General for the State.

J U D G M E N T

(18th September 2007)

Dhirendra Mishra, J

This criminal appeal under Section 374(2) of the Code of Criminal Procedure is directed against the judgment of conviction and order of sentence dated 8.2.2006 passed in S.T.No. 437/2004 whereby learned II Additional Sessions Judge, (F.T.C.), Surajpur, Distt. Surguja has convicted the appellant under Sections 450, 376(1) and 324 of the Indian Penal Code and sentenced him to undergo R.I. for 7 years & pay a fine of Rs.1000/-, R.I. for 7 years & pay a fine of Rs. 1000/-, R.I. for 1 year, respectively and in default of payment of fine to undergo additional R.I. for one month on each count. All the sentences have been directed to run concurrently.

2. Case of the prosecution in brief is that on 29.12.2002 husband of the prosecutrix had gone to other village for selling vegetable. At about 5.00 p.m. when the prosecutrix was alone in her house and cooking food, the accused entered in her house and laid her on the floor. The prosecutrix raised an alarm, however, no one came there and thereafter, the accused forcibly raped her. When the prosecutrix threatened to narrate the incident to her husband, he started beating her, as a result of which she ran towards kitchen garden. The accused chased and caught her and bit her on her right arm. On hearing noise Mahendra and Rajkumari came there, whereupon the accused fled from there. She narrated the incident to her husband when he

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returned about 8.00 p.m. She also narrated the incident to her father and brother and thereafter, the report of Ex.P/2 was lodged at Police Outpost Basdei in the following day at about 10.00 a.m. by the prosecutrix. On the basis of report of Ex.P/2, First Information Report of Ex.P/15 was registered under Crime No. 324/02. The prosecutrix was sent for medical examination to District Hospital, Ambikapur where Dr. (Smt.) S.P. Jaiswal (PW-11) examined her and gave her report of Ex.P/8. The underwear of the accused was also seized in a sealed packet vide Ex.P/1. Sealed packets containing petticoat and vaginal slides of the prosecutrix were seized vide Ex.P/7. The accused was also medically examined vide Ex.P/6. The seized articles were sent for chemical examination to Forensic Science Laboratory, Raipur and report of the F.S.L. dated 21.7.2003 was obtained.

3. After completing investigation charge sheet was filed against the accused/appellant in the Court of Judicial Magistrate First Class, Surajpur. During trial the prosecution examined 13 witnesses. Statement of the accused/appellant was recorded under Section 313 of the Cr.P.C. in which he denied the circumstances appearing against him in the prosecution case, pleaded innocence and stated that there was a quarrel between his wife and the complainant and for this reason, he has been falsely implicated.

4. Learned trial Court having heard counsel for the respective parties, convicted and sentenced the accused/appellant as mentioned in paragraph 1 of this judgment.

5. Learned counsel for the accused/appellant contended that the appellant and the prosecutrix are neighbours. On the date of incident around 3 to 3.30 p.m. there was a quarrel and physical scuffle between the prosecutrix and his wife Fuleshwari in connection with theft of bottle-gourd from the kitchen garden of the appellant and she was beaten by his wife. Neighbour Mahendra intervened and separated them. The prosecutrix narrated this fact that Fuleshwari had beaten her to the villagers. She also communicated her husband and father through Rajkumar about the quarrel. However, after return of her husband, a false report was lodged by the prosecutrix in the following day after due deliberation with her husband and brother. Thereafter, Gram Sabha was convened in the village and as per

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decision of the Gram Sabha complaint was made to the Collector with a copy of the same to the Superintendent of Police on 2.1.2003 mentioning therein the above fact. 40-45 houses are situated near the place of incident and the house of Mahendra is adjacent to the house of the prosecutrix.

6. He further argued that conviction is based on the statements of the prosecutrix, her husband Suresh Kumar (PW-3), Rameshwar (PW-5) and Lolar (PW-6), brother and father of the prosecutrix respectively. No independent witness has been examined by the prosecution. The version of the prosecutrix is contradicted by the medical evidence of Dr. (Smt.) Jaiswal (PW-11) who examined the prosecutrix and gave her report of Ex.P/8, in which she has not found the injuries described by the prosecutrix in her statement before the Court. Even otherwise, allegation of the prosecutrix that after committing rape the appellant chased her and bit her in the kitchen garden, is quite improbable and unnatural. It was further submitted that version of the defence witnesses has been overlooked though the prosecutrix has herself admitted presence of defence witness Mahendra at the time of incident and also admitted that she narrated about the incident to Sarpanch Hooblal, Rajkumar, Matraniya, who are the defence witnesses. There is evidence available on record that the complainant had engaged a counsel and before going to the Court for recording their evidence they met him and even after tutoring, there are material omissions/contradictions in the statements of the prosecutrix and other prosecution witnesses.

7. On the other hand, learned counsel for the State supported impugned judgment of the trial Court.

8. I have heard learned counsel for both the parties and have perused the impugned judgment as also the evidence available on record.

9. Learned trial Court has convicted the appellant on the basis of statements of the prosecutrix (PW-2), her husband Suresh Kumar (PW-3), her brother Rameshwar (PW-5) and her father Lolar (PW-6). Conviction is also based on the statement of the Dr. (Smt.) S.P. Jaiswal (PW-11). The trial Court in paragraph 15 of the judgment has held that statement of the prosecutrix regarding commission of rape is

duly corroborated by the above witnesses and their statements cannot be discarded simply on the ground that they are interested witnesses. There is no evidence of previous enmity between the prosecutrix or her husband and the accused. Defence taken by the appellant that since the prosecutrix was beaten by his wife, she lodged a false report of rape against him is held to be highly improbable on the ground that no lady would involve her honour for such a petty reason. Version of the prosecutrix should not be viewed with suspicion when her statement appears to be trustworthy and reliable, it should be acted upon without insisting for corroboration. The trial Court has drawn adverse inference against the appellant for not examining his wife Fuleshwari and defence of making false complaint to the Collector has been disbelieved on the ground that had there been no incident or rape, they ought to have contacted Superintendent of Police. The omissions present in the statement of the prosecutrix are trivial. The absence of injuries on the person of the prosecutrix is not fatal as rape was committed inside the house and presence of injury on the person of the prosecutrix is not necessary in case of rape and only on the basis of negative F.S.L. report of Ex.P/16 reliable evidence cannot be discarded. Thus, on the basis of aforesaid observation the learned trial Court held the appellant guilty of the above offence and sentenced him accordingly.

10. It is settled law that once statement of the prosecutrix inspires confidence and the same is acceptable, conviction can be based only on the solitary evidence of the prosecutrix and no corroboration of her testimony is required unless there are compelling reasons, which necessitate the same as the prosecutrix is a victim of offence of rape and she is not an accomplice. However, when it is difficult to accept version of the prosecutrix on its face value, the Court may search for evidence, direct or circumstantial, which would lend assurance to her testimony.

11. In the instant case, the prosecutrix has stated that she was raped inside her house while she was alone and when she threatened the accused that she would be disclosing this fact to her husband, she was chased and thereafter, both of them involved in physical scuffle. The accused bit her on her right arm. He also threatened to murder her. At that juncture, Rajkumari reached there and tried to separate

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them and when she could not succeed, she called Mahendra. She has also stated that she raised an alarm before commission of rape, however, nobody turned up and rape continued for 10 minutes. She has also stated in paragraphs 20 and 21 that her bangles were broken and clothes were torn during commission of the offence but the same were not seized by the police. She has sustained injuries over her wrist, back, buttock and thighs, as a result of breaking of bangles and dragging by the accused. She stated that she had mentioned these injuries to the police as also to the doctor. In paragraph 9 she has stated that she sent Rajkumar to Badsara, her parental house, to inform her husband and father about the incident of *Marpeet* only and she had called them. She also admitted in paragraph 6 that her father-in-law Sundersai and brother-in-law Baldev are her neighbours, their house is adjacent to her house, there are 40-45 houses in the vicinity, which is inhabited by their caste fellow Kushwaha and the house of Mahendra Kushwaha is adjacent to her kitchen garden whereas the house of witness Rajkumari is at a distance of about 75 meters.

12. The version of this witness regarding sustaining injuries on her wrist, back, buttock and thighs are contradicted by the statement of Dr. (Smt.) Jaiswal (PW-11), who has examined her on 31.12.2002 after the incident and has categorically stated that she did not notice any external injuries on her person except one injury of size 2 x 2 cm, duration of which may be 48-72 hours. Her report is Ex.P/8. From perusal of report of Ex.P/8 it appears that that description of injuries has been subsequently inserted in the report. Thus, version of the prosecutrix is not wholly reliable as she is contradicted by the medical evidence. Moreover, she has claimed that she mentioned about the injuries to the police as also to the doctor, however, the memo by which she was sent for medical examination to the doctor also does not mention presence of any injury over person of the prosecutrix. Apart from this, the defence in paragraphs 10 & 11 of cross-examination has pointed out omissions in her report of Ex.P/2 as well as diary statement of Ex.D/1 regarding meeting Rajkumar on the date of incident and sending him to Badsara, threatening by the accused to murder her, arrival of Rajkumari alone after hearing her shouts and trying to rescue, thereafter calling Mahendra Kushwaha and taking out underwear by the accused.

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13. In view of above discrepancy in the statement of the prosecutrix, it would not be safe to place implicit reliance upon her testimony without any corroborative evidence.

14. The prosecutrix has stated in her deposition before the Court that when she raised an alarm while the accused was dragging her towards kitchen garden, Rajkumari and Mahendra came there and separated them. Mahendra is a cited witness of the prosecution. Rajkumari, who is sister-in-law of the prosecutrix, has been examined as PW-4 and stated that she heard the prosecutrix shouting that the accused is trying to outrage her modesty, thereafter Ramdev threw her on the ground, she tried to separate them and when she could not succeed, she called Mahndra. Later on, the prosecutrix told her that the accused had outraged her modesty and bitten her inside the house also. Except this she did not tell her anything. She has been declared hostile. However, in cross-examination she has admitted the version given by her in diary statement of Ex.P/5 regarding commission of rape by the appellant. In her diary statement of Ex.P/5 the fact that Ramdev, the accused, had bitten her hand is not mentioned and she has admitted that both Mahendra and herself came in the kitchen garden only after hearing shouts of the prosecutrix. She has denied the quarrel between Fuleshwari, wife of the appellant and the prosecutrix and also denied that in fact Fuleshwari has bitten the prosecutrix during quarrel. She has further denied the suggestion that when both the ladies were fighting, at that time Ramdev came there and took her with him. She has stated that Ramdev was present since before. She has further admitted that 3-4 days after the incident Panchayat was convened in village before the house of her brother Suresh, which was attended by Sarpanch, Upsarpanch, Panch and other villagers. They were also called in the said Panchayat. The prosecutrix was also called but she was not present in the home.

15. PW-3 Suresh, PW-5 Rameshwar and PW-6 Lolar are witnesses of the fact that on the date of incident Suresh was in his in-laws' village Badsara. In the night Rajkumar came there and informed them that some quarrel has taken place in his house between the prosecutrix and Ramdev. Thereafter, they came to village Banja where the prosecutrix informed them about the incident of rape and report was

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lodged on the following day in the morning. PW-5 Rameshwar has admitted that they had engaged a counsel in the case to represent them and they met their counsel before giving evidence in the Court. The husband of the prosecutrix has expressed ignorance about any Panchayat being held in front of his house on 2.1.2003 as he was not present in the village on that date. Whereas PW-6 Lolar has stated that on the date of incident Rajkumar came to village Badsara on motorcycle and informed that Ramdev has robbed the honour of his daughter whereupon he and Suresh accompanied Rajkumar on his motorcycle to village Banja around 8.00 p.m. Rajkumar has not been cited as a witness though he was an independent witness, through whom the prosecutrix sent message to her parents at village Badsara.

16. Thus, from the evidence adduced by the prosecution it is seen that only close relatives have been examined during trial, independent witnesses though available and have been referred to by the prosecutrix, have not been examined by the prosecution. On the contrary, the appellant has examined independent witnesses as his defence witnesses. The investigating officer K.P. Gupta, A.S.I. (PW-12) in paragraph 19 of his deposition has admitted that he had recorded diary statement of Mahendra and during investigation also he had gathered evidence that the prosecutrix and wife of the accused were fighting together in the Badi of appellant. However, he did not think it necessary to conduct separate investigation on the basis of above information.

17. Rajkumar (DW-2) through whom the prosecutrix sent message about the quarrel to her husband and parents, has stated that the prosecutrix came to his house in the evening, told him that her husband had gone to sell vegetable, her parents reside at Jhajrimuda in village Basdara and he should inform them that wife of Ramdev has quarreled with her. Thereupon, he went Badsara and communicated the above fact to her father, brother and husband and returned with them on his motorcycle to village Banja. He has been cross-examined at length, however, he has stuck to his statement that the prosecutrix had stated that quarrel was between her and wife of the accused. Mahendra Kumar is cited witness of the prosecution. His house is adjacent to kitchen garden of the prosecutrix. He has also stated that around 3.00 p.m. on the date of incident he heard noise from the Badi

and when he came out of his house, he saw Fuleshwari and the prosecutrix fighting with each other in the Badi and that Fuleshwari had bitten the prosecutrix on her right arm. He separated both of them. He had stated this fact to the police after the incident and denied the suggestion that the accused had bitten the prosecutrix on her right arm. His diary statement is available with the charge sheet, however, the prosecution has not confronted him with his diary statement as he had disclosed the same fact in his police statement.

18. Matraniya (DW-1) has also stated the above fact that the quarrel was in fact between Fuleshwari and the prosecutrix and it was wife of the accused who had bitten hand of the prosecutrix and this fact was told to her by the prosecutrix herself immediately after the incident. The prosecutrix had admitted in her deposition that this witness met her on way and she narrated the incident to her also. The above three witnesses are independent witnesses, their presence has been admitted by the prosecutrix including the fact that she narrated about the incident to them immediately after the incident. Hariom Shrivastava and Hooblal Singh have been examined as DW-4 and DW-5. They have also stated that Panchayat was convened and in the said Panchayat it was revealed that the quarrel was in fact between wife of the appellant the prosecutrix and a false report was lodged by the prosecutrix of rape against the appellant immediately after the incident on 2.1.2003 and on the basis of resolution of Gram Sabha a written complaint was made to the Collector mentioning the true facts and about false implication of rape by the prosecutrix. The complaint bears signature of the Sarpanch and other villagers and the same has been forwarded to the Superintendent of Police.

19. As has already been mentioned in the foregoing paragraphs, version of the prosecutrix does not inspire confidence as she is contradicted by the medical evidence in which no corresponding injuries as claimed by her in her statement, has been found. Even otherwise, the allegation that the appellant engaged with her in fighting after committing rape in the Badi appears to be highly improbable as the incident is at 5.00 p.m. and the same occurred in a dense locality. It also appears improbable that even after prosecutrix raised an alarm while attempt of rape was being made by the appellant, nobody reached the place of incident to her rescue. Apart

from this, vaginal slides of the prosecutrix and the petticoat worn by her at the time of incident with semen spots were sent for chemical examination but report of F.S.L. (Ex.P/16) does not confirm the presence of sperm which also creates doubt about truthfulness of the allegation of rape.

20. For the foregoing reasons this Court is of the considered opinion that version of the prosecutrix and other prosecution witnesses who are close relatives of the prosecutrix and as such, highly interested witnesses does not inspire confidence. On the other hand, defence of the appellant which is established by the statements of the independent defence witnesses whose presence on the spot is admitted by the prosecutrix also, makes his defence more probable that fighting was in fact between wife of the appellant and the prosecutrix and in that process the prosecutrix sustained bite injury on her right arm and because of this a false report or rape has been lodged against the appellant after due deliberation with her relatives.

21. In the result, the appeal succeeds. Conviction of the appellant under Sections 450, 376(1) and 324 of the Indian Penal Code and sentence imposed thereon, are set aside. He is acquitted of the above charges. He be set at liberty forthwith if not required in any other case.

Sd/-
Dhirendra Mishra
Judge

K/-